

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

2003 MAY -4 PM 5:14

NANCY M.
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ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the)
Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

**INTERIOR DEFENDANTS' MOTION TO DEFER RULING ON
PLAINTIFFS' APPLICATION FOR FEES AND EXPENSES FILED APRIL 4, 2003**

Interior Defendants respectfully request that the Court defer ruling on Plaintiffs' Application for Fees and Expenses Related to Defendants' Rejected Motion for Protective Order Re Powers of the Special Master-Monitor Pursuant to Court Order Issued March 5, 2003 ("Plaintiffs' Fee Application"). Given that the ruling on which Plaintiffs' Application is based is the subject of a pending motion for reconsideration, and that the Court of Appeals has ordered a stay, pending its further order, of all orders by the District Court authorizing the Special Master-Monitor to act in this case, it would be inappropriate for the Court to rule on Plaintiffs' Fee Application at this juncture.

DISCUSSION

On January 23, 2003, Interior Defendants moved for a protective order precluding the Special Master-Monitor from seeking discovery from Interior Defendants, and proscribing the Special Master-Monitor from implementing a rule he announced that would enable him to make

dispositive substantive rulings at depositions. See Interior Defendants' Motion For A Protective Order As To Discovery By The Special Master-Monitor And As To The Rule Announced By The Special Master-Monitor Concerning Deposition Questioning and accompanying Memorandum Of Points And Authorities (filed Jan. 23, 2003) (collectively "Protective Order Motion"). Both aspects of the relief sought in that motion were based on the manner in which the Special Master-Monitor had carried out the role for which he was appointed. See id.

By Memorandum and Order filed March 5, 2003 ("Memorandum and Order"), the Court denied the Protective Order Motion. In addition, the Court imposed sanctions on Interior Defendants for bringing what it deemed was "a completely frivolous motion." See Memorandum and Order at 27. In that regard, the Court ordered defendants and their counsel to "pay to plaintiffs all reasonable expenses, including attorneys' fees, that plaintiffs incurred in opposing defendants' motion for a protective order." Id. at 29. Pursuant to that Order, on April 4, 2003, Plaintiffs filed the fee application that is the subject of this motion.

On March 18, 2003, Interior Defendants moved for reconsideration of the Memorandum and Order, to the extent it imposed sanctions, because the assumptions underlying the Court's ruling relating to disclosure requests by the Special Master-Monitor were erroneous, the motion raised issues of first impression, and sanctions were inappropriate given that the Court effectively granted the relief sought by Interior Defendants with respect to the Special Master-Monitor's attempt to assert authority to make substantive rulings during depositions. Interior Defendants' Motion For Reconsideration Of The Court's March 5, 2003

Memorandum And Order Insofar As It Imposed Sanctions On Interior Defendants And Their Counsel ("Reconsideration Motion"). That motion remains sub judice.

On April 24, 2003, after hearing oral argument on certain issues arising from this litigation, the Court of Appeals for the District of Columbia Circuit ordered, on its own motion, "that all orders of the district court, including but not limited to the orders dated April 16, 2001, April 15, 2002, and September 17, 2002, insofar as they authorize Joseph S. Kieffer III to act as Court Monitor, Special Master-Monitor or in any other capacity in this case, be stayed pending further order of this court." Order (filed April 24, 2003).

Because the disposition of Plaintiffs' Fee Application may be affected by the Court's adjudication of the pending Reconsideration Motion, and by the proceedings presently before the Court of Appeals, it would be inappropriate for the Court to rule on Plaintiffs' Fee Application at this time.¹

¹ In accordance with Local Civil Rule 7.1(m), counsel for Interior Defendants attempted to confer with counsel for Plaintiffs regarding this motion, but were unsuccessful in procuring a response.

CONCLUSION

Based on the foregoing, Interior Defendants respectfully request that the Court defer ruling on Plaintiffs' Fee Application pending its ruling on the Reconsideration Motion and the Court of Appeals' adjudication of the pending appeal.

Dated: May 5, 2003

Respectfully submitted,
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ORDER

This matter coming before the Court on Interior Defendants' Motion To Defer Ruling On Plaintiffs' Application For Fees And Expenses Filed April 4, 2003, and having considered the motion and any responses thereto, the Court finds that the motion should be GRANTED.

IT IS THEREFORE ORDERED THAT adjudication of Plaintiffs' Application For Fees And Expenses Related To Defendants' Rejected Motion For Protective Order Re Powers Of The Special Master-Monitor Pursuant To Court Order Issued March 5, 2003 is deferred pending the Court's ruling on Interior Defendants' Motion For Reconsideration Of The Court's March 5, 2003 Memorandum And Order Insofar As It Imposed Sanctions On Interior Defendants And Their Counsel, and adjudication by the U.S. Court of Appeals for the D.C. Circuit of Cobell v. Norton, No. 02-5374.

SO ORDERED this ____ day of _____, 2003.

ROYCE C. LAMBERTH
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 5, 2003 I served the foregoing *Interior Defendants' Motion to Defer Ruling on Plaintiffs' Application for Fees and Expenses Filed on April 4, 2003* by hand upon:

by fax upon (for 10/31/01 agreement):

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Per the Court's Order of April 17, 2003
By Facsimile and U.S. Mail upon:


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